

EXHIBIT 16

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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GEN-PROBE INCORPORATED,)

NO.99cv2668 H (AJB)

09:23:0

Plaintiff,)

VS.)

09:23:0

VYSIS, INC.,)

09:23:0

Defendant.)

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CONFIDENTIAL

09:23:0

Videotaped Deposition of
JONATHON MICHAEL LAWRIE, Ph.D.
Durham, North Carolina
Thursday, February 15, 2001

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Reported by:

Sydney C. Silva, Registered Professional Reporter

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1 meeting of Scientific Advisory Board in the fall of 2 1986?	11:45:52	1 Q. Does that indicate to you that Exhibit 50	11:48:01
3 A. I don't remember.	11:45:56	2 was prepared by you in the course of a Gene-Trak	11:48:04
4 (Deposition Exhibits Nos. 49 and 50	11:45:57	3 Scientific Advisory Board meeting?	11:48:08
5 marked for identification.)	11:46:16	4 A. During the meeting?	11:48:09
6 Q. I'm going to hand you two sets of notes.	11:46:16	5 Q. Yes.	11:48:10
7 The first set we'll mark as Exhibit 49 and the	11:46:16	6 A. I don't know.	11:48:11
8 second set we'll mark as Exhibit 50. And I would	11:46:17	7 Q. Prepared in connection with the meeting?	11:48:12
9 like you to look at them, first so you can tell me	11:46:22	8 A. Yes.	11:48:13
10 whether or not you recognize any of the handwriting	11:46:29	9 Q. Could have been prepared before or during	11:48:14
11 on these two exhibits.	11:46:33	10 or after a meeting?	11:48:17
12 A. Yes, I do.	11:46:36	11 A. Yes.	11:48:18
13 Q. Do you recognize the handwriting on both?	11:46:39	12 Q. Do you recall which one?	11:48:19
14 A. Yes.	11:46:40	13 A. Hum. I don't know.	11:48:24
15 Q. Exhibit 49 has got the larger, clearer	11:46:43	14 Q. Do you have any idea when you prepared	11:48:29
16 printing and a schematic on the first page. Do you	11:46:45	15 Exhibit 49?	11:48:33
17 know whose handwriting that was?	11:46:50	16 A. When? I don't know.	11:48:42
18 A. Yes.	11:46:54	17 Q. Can you recall an event that you prepared	11:48:47
19 Q. Whose?	11:46:55	18 Exhibit 49 in connection with?	11:48:52
20 A. That's mine.	11:46:56	19 A. No.	11:48:53
21 Q. Exhibit 50, do you know whose handwriting	11:46:56	20 Q. You can't do anything to place Exhibit 49	11:48:53
22 that is?	11:46:58	21 in context as you sit here today?	11:48:56
23 A. Yes.	11:47:00	22 A. It's neat, so it was prepared before a	11:48:59
24 Q. Whose is that?	11:47:01	23 presentation; but I have no idea what presentation.	11:49:03
	11:47:01	24 Q. Whatever presentation you made that	11:49:08
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1 A. It's mine.	11:47:02	1 included Exhibit 49, you believe Exhibit 49 was	11:49:11
2 Q. Both of these are in your handwriting?	11:47:03	2 prepared ahead of time prior to the presentation?	11:49:15
3 A. Yes.	11:47:08	3 A. Yes.	11:49:18
4 Q. And to the best of your recollection,	11:47:09	4 Q. Can you recall getting the input of	11:49:19
5 were these Exhibits 49 and 50 prepared in the	11:47:12	5 anyone in connection with the preparation of	11:49:20
6 course of a Scientific Advisory Board meeting?	11:47:16	6 Exhibit 49?	11:49:24
7 A. My best of my recollection or looking at	11:47:19	7 A. No.	11:49:26
8 the documents?	11:47:25	8 Q. Exhibit 50, would you say that's less	11:49:27
9 Q. The best of your recollection.	11:47:26	9 neat than Exhibit 49?	11:49:29
10 A. I don't know what these were made for.	11:47:26	10 A. Yes.	11:49:30
11 Q. Okay. Looking at Exhibit 50, do you	11:47:27	11 Q. Would that indicate to you that it might	11:49:31
12 think that was prepared in the course of a	11:47:29	12 be -- let me start over.	11:49:35
13 Scientific Advisory Board meeting?	11:47:31	13 Would that indicate to you that it is	11:49:37
14 A. Yes, it says "SAB."	11:47:34	14 more likely notes taken contemporaneously during a	11:49:40
15 Q. And do you -- the heading at the top of	11:47:36	15 meeting at the same time the meeting was going on?	11:49:45
16 Exhibit 50, "SAB" indicates it was prepared by you	11:47:37	16 A. I don't know.	11:49:52
17 as notes of a Scientific Advisory Board meeting at	11:47:43	17 Q. Do you have any independent recollection	11:49:53
18 Gene-Trak?	11:47:45	18 of Exhibit 49; can you recall having seen it	11:49:55
19 MR. BANKS: Could you read that back,	11:47:48	19 before?	11:49:58
20 please.	11:47:49	20 A. No.	11:50:00
21 Q. I'll try it again, it'll be easier.	11:47:51	21 Q. Do you recall any meeting of the	11:50:05
22 Looking at Exhibit 50, it is headed at	11:47:51	22 Scientific Advisory Board of Gene-Trak at which	11:50:06
23 the top of Page 1, "SAB." Do you see that?	11:47:54	23 there was a discussion of combining target capture	11:50:10
24 A. Yes is.	11:47:58	24 with target amplification?	11:50:14

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1 PCR method?	12:13:08	1 diagramed out in Exhibit 49, any of those five	12:16:20
2 A. I don't know. I don't know.	12:13:15	2 pages, to any of the amplification methods set	12:16:24
3 Q. You can't recall whether you were ever,	12:13:16	3 forth on the third page of the Exhibit 48, which is	12:16:29
4 whether you were ever concerned about that?	12:13:20	4 the Scientific Advisory Board packet from	12:16:37
5 A. Correct.	12:13:22	5 November 4, 1986?	12:16:40
6 Q. Can you recall whether anyone else --	12:13:23	6 A. Orgel. I, I could speculate that the Q	12:16:55
7 that you understood that anyone else was concerned	12:13:24	7 beta here is similar to what is set here. This	12:17:01
8 about whether the use of specific capture probes	12:13:26	8 says "signal amplification" on top and "Q beta."	12:17:05
9 made any work that Gene-Trak was doing too close to	12:13:31	9 This says Q beta replicase and signal	12:17:10
10 Cetus's PCR method?	12:13:34	10 amplification.	12:17:12
11 MR. BANKS: Just caution you not to	12:13:36	11 Q. So you think the Q beta signal	12:17:12
12 reveal any privileged information in answering	12:13:38	12 amplification on Page 5 of the package of diagrams	12:17:15
13 that.	12:13:42	13 is probably two Orgel?	12:17:21
14 A. Yeah. Capture probes are not the same as	12:13:42	14 A. This? That I can't say. I don't -- I	12:17:23
15 Cetus; so I don't think, my definition of capture	12:13:45	15 can't remember what Orgel is.	12:17:24
16 probes is not Cetus. Even today I would say it is	12:13:48	16 Q. Can you relate any of the methods shown	12:17:27
17 different.	12:13:54	17 on the Scientific Advisory Board packet to any of	12:17:30
18 Q. Can you ever recall discussions at	12:13:58	18 the methods shown in Exhibit 49, the package of	12:17:33
19 Gene-Trak about trying to achieve target	12:14:01	19 diagrams?	12:17:40
20 amplification that was equivalent to PCR by	12:14:05	20 A. There's lots of good stuff here. I'd	12:17:52
21 combining a specific capture within a nonspecific	12:14:09	21 have to speculate. Beyond Orgel, which I assume is	12:18:03
22 amplification step?	12:14:14	22 the same as Kramer, I would be speculating to say	12:18:07
23 A. Equivalent to Cetus? No.	12:14:20	23 that this is part of that.	12:18:10
24 Q. Better than Cetus?	12:14:22	24 MR. BOWEN: We could go another five	12:18:21

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1 A. Better? Yeah, it's difficult.	12:14:29	1 minutes or break for lunch, what's your	12:18:23
2 Q. While you were at Gene-Trak, did	12:14:36	2 preference?	12:18:26
3 Gene-Trak do work that combined specific target	12:14:38	3 MR. BANKS: I'm ready to break whenever	12:18:28
4 capture with amplification methods that would be	12:14:41	4 you want to, but it's your call.	12:18:29
5 nonspecific in and of themselves?	12:14:45	5 MR. BOWEN: Are you ready?	12:18:34
6 A. So you, by "develop," you mean?	12:14:51	6 THE WITNESS: Doesn't matter to me.	12:18:35
7 Q. Was there work going on --	12:14:55	7 MR. BANKS: Do you want to break for	12:18:35
8 A. I don't know.	12:14:57	8 lunch?	12:18:36
9 Q. -- in the laboratory?	12:14:57	9 THE WITNESS: We can go another five	12:18:37
10 Looking at Page 5 of Exhibit 49, which	12:15:04	10 minutes, if you want to complete your chain of	12:18:39
11 you will probably be happy to know is the last page	12:15:11	11 thought.	12:18:43
12 of Exhibit 49, Page 5 lays out apparently to me	12:15:14	12 BY MR. BOWEN:	12:18:43
13 three alternative methods of signal amplification.	12:15:22	13 Q. Then I would like for you to pick up the	12:18:44
14 Is that a fair statement?	12:15:24	14 patent that we marked at the start as Exhibit 37.	12:18:46
15 A. Three? Three bullet points, yes.	12:15:27	15 A. Okay.	12:18:49
16 Q. These are three method of signal	12:15:31	16 Q. We previously looked at I think Example 6	12:18:50
17 amplification?	12:15:34	17 of the patent, which is in Column 31, starts in	12:18:53
18 A. Let me look. Yes.	12:15:35	18 Column 31. I would like to turn back to earlier in	12:18:56
19 Q. We looked, I think, at five pages in	12:16:05	19 the patent, Column 24, the prior page of the	12:19:01
20 Exhibit 49. The fifth page has got three methods	12:16:09	20 patent, and start with Example 1.	12:19:06
21 of amplification; the others generally I think	12:16:13	21 A. All right.	12:19:19
22 describe one. Is that fair?	12:16:15	22 Q. You know, that's going to take too much	12:19:25
23 A. Yes.	12:16:17	23 time.	12:19:29
24 Q. Can you relate any of those five methods	12:16:17	24 Can you turn to Example 7, which is in	12:19:39

1 A. Yes, in the first sentence. 16:19:36

2 Q. And the amplification method described in 16:19:45

3 Example 4 is in vitro amplification of captured DNA 16:19:51

4 using an RNA polymerase, is that right? 16:19:56

5 A. Yes. 16:20:07

6 Q. And is it your understanding that the use 16:20:10

7 of the RNA polymerase would result in nonspecific 16:20:14

8 transcription of the target DNA? 16:20:23

9 A. Yes. 16:20:25

10 Q. So Example 4 describes a nonspecific 16:20:25

11 method of amplification? 16:20:29

12 A. Yes. 16:20:33

13 Q. And the method of amplification described 16:20:34

14 in Example 4 is a method of linear amplification, 16:20:37

15 is that correct? 16:20:43

16 A. Yes. 16:20:47

17 Q. Looking at Example 5, Example 5 also 16:20:56

18 refers to nonspecific amplification, is that 16:21:10

19 correct? 16:21:13

20 A. The first sentence says, "Nonspecific 16:21:13

21 replication of target DNA and transcription of that 16:21:17

22 DNA are used to amplify captured target DNA." So 16:21:23

23 it does address amplification. 16:21:36

24 Q. And the amplification method disclosed in 16:21:38

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1 Example 5 is a linear method? 16:21:41
2 A. Let's see. 16:21:44
3 Yes, it is linear. 16:22:29
4 Q. So Example 5 discloses a linear 16:22:31
5 nonspecific method of amplification? 16:22:34
6 A. Yes. 16:22:37
7 Q. So recapping the examples, Examples 1 16:22:38
8 through 3 disclose capture methods without 16:22:43
9 amplification? 16:22:46
10 A. Yes. 16:22:48
11 Q. And Example 4 discloses linear 16:22:49
12 nonspecific amplification? 16:22:53
13 A. Yes. 16:22:54
14 Q. Example 5 discloses linear nonspecific 16:22:55
15 amplification? 16:22:59
16 A. Yes. 16:23:00
17 Q. Example 6 seeks to describe nonspecific 16:23:02
18 exponential amplification? 16:23:10
19 A. Let's see. Yes. 16:23:13
20 Q. And Example 7 describes -- seeks to 16:23:18
21 describe nonspecific exponential amplification? 16:23:22
22 A. Yes. 16:23:28
23 Q. Looking back at Column 30, specifically 16:23:44
24 at Lines 30 through 40, which I think is two 16:23:48

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